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6 Attorneys for Plaintiff  
 IMAGEWARE SYSTEMS, INC.  
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8 UNITED STATES DISTRICT COURT  
 9 SOUTHERN DISTRICT OF CALIFORNIA

11 IMAGEWARE SYSTEMS, INC., a Delaware  
 corporation,

12 Plaintiff,

13 vs.

14 WCC SERVICES US, INC., a Delaware  
 15 corporation; CREATIVE INFORMATION  
 TECHNOLOGY, INC.; a Maryland  
 16 corporation; and DOES 1 through 10,  
 inclusive,

17 Defendants.  
 18

CASE NO. 13-CV-0309-DMS-JMA

**FIRST AMENDED COMPLAINT FOR  
 PATENT INFRINGEMENT**

**DEMAND FOR JURY TRIAL**

1 Plaintiff ImageWare Systems, Inc., (“ImageWare”) hereby complains of WCC Services  
2 US, Inc. (“WCC”), Creative Information Technology, Inc. (“CITI”), and DOES 1 through 10  
3 (collectively, “Defendants”), and alleges as follows:

4 **NATURE OF THE ACTION**

5 1. This is an action for patent infringement under the patent laws of the United States,  
6 35 U.S.C. § 271, *et seq.*

7 **THE PARTIES**

8 2. ImageWare is a publicly-traded software company based in San Diego, California  
9 that develops, markets and sells highly innovative technology solutions for the identity  
10 management industry, particularly for government, border control, healthcare, financial services,  
11 and electronic and mobile commerce applications. ImageWare’s flagship product is its IWS™  
12 Biometric Engine®, which is the world’s first and only patented multi-modal, device- and  
13 algorithm-independent biometric fusion platform that can search for, screen and authenticate  
14 individuals using more than a dozen biometric modalities, including fingerprint, finger vein, palm  
15 vein, face, and iris (among others). ImageWare’s suite of multimodal biometric fusion products  
16 and software provide optimized identity enrollment, management and authentication solutions for  
17 a variety of applications, including secure credentialing, controlled access, national identification,  
18 border control, watch list, voter registration, driver license, and airport security purposes (among  
19 many others). ImageWare is organized and existing under the laws of the State of Delaware, with  
20 its principal place of business located at 10815 Rancho Bernardo Road, Suite 310, San Diego,  
21 California 92127.

22 3. ImageWare is informed and believes and based thereon alleges that Defendant  
23 WCC is a corporation organized and existing under the laws of the State of Delaware, with its  
24 principal place of business located at 228 Hamilton Ave, #300, Palo Alto, California 94301.  
25 WCC may be served through its registered agent Maureen Dorney, 450 Sheridan Avenue, Palo  
26 Alto, California 94306.

27 4. ImageWare is informed and believes and based thereon alleges that Defendant  
28 Creative Information Technology, Inc. (“CITI”) is a corporation organized and existing under the

1 laws of the Commonwealth of Virginia or the State of Maryland with its principal place of  
2 business located at 7799 Leesburg Pike, Suite 500 North, Falls Church, Virginia 22043. CITI  
3 may be served through its registered agent National Registered Agents, Inc., 4701 Cox Road,  
4 Suite 301, Glen Allen, Virginia 23060.

5 5. ImageWare is informed and believes and based thereon alleges that the accused  
6 products made, used and sold by and among the defendants are multi-modal biometric software  
7 products and applications including without limitation WCC's ELISE ID. ImageWare is  
8 informed and believes and based thereon alleges that ELISE ID is made and sold by WCC to  
9 CITI, a systems integrator who integrates it with other components and resells to customers,  
10 partners and end users, including without limitation Alutiiq 3SG, LLC based in Anchorage,  
11 Alaska ("Alutiiq").

12 6. The reseller and/or partnership relationship between WCC and CITI has been  
13 known to the public and to ImageWare for a time prior to February 7, 2013. During an interview  
14 with FindBiometrics in July, 2012, Peter Went (CEO of WCC) discussed WCC's recent  
15 deployment of ELISE in a Central American country in partnership with CITI:

16 "The first, and this is one that we are very excited about, is a recent deployment in a  
17 Central American country. For this deployment, we worked together with our partner  
18 CITI, which incidentally is a very interesting organization. They're a relatively small  
19 system integrator, but very focused on what they are doing. ***CITI built a solution for***  
20 ***border management, and WCC supplied the identification and de-duplication***  
21 ***components***. So we are very proud of this deployment which will be going live anytime  
22 now. It has already been installed and tested. Now that it's fully operational, operators  
23 are being trained. As a border solution, it functions both as front- and back-end: at the  
24 local consular post the system will be running from a client perspective – people can apply  
25 for a visa – and then in the back-end, ***a solution also incorporating ELISE is doing***  
26 ***background checks*** to see whether there are alerts related to an ID. So we not only verify  
27 that the person crossing the border indeed possesses a valid visa, but we also perform a  
28 real time check against certain watch lists just to make sure he or she is not being sought.

1 The beauty of it is that this is a very generic system tuned and configured for this specific  
2 border application. And I can tell you that in the near future, you will be hearing much  
3 more about CITI and WCC combining forces, because we are currently focusing on  
4 several other opportunities worldwide – it’s a little too early to disclose the exact nature of  
5 these deployments, but perhaps I’ll be able to tell you more in future interviews. Anyway,  
6 ***this Central American deployment is very multimodal, capturing 10 fingers, 2 irises and***  
7 ***a face in addition to the usual biographics.*** The de-duplication and uniqueness check,  
8 and also the background check, is performed on the combined finger and iris data. The  
9 application is actually similar to that of the UID in India which captures 10 fingers, 2  
10 irises and face. The facial data are not used in either case though, because typically, the  
11 quality is insufficient, so that face matching would not add enough to the fusion mix in  
12 terms of increased accuracy or security.” (Emphasis added).

13 7. During an interview at the 2012 Biometric Consortium Conference that took place  
14 September 18-20, 2012 in Tampa, Florida, Peter Went (CEO of WCC) further discussed WCC’s  
15 partnership with CITI. On February 7, 2013, Defendants WCC and CITI co-sponsored a case  
16 study in Miami, Florida during which WCC and CITI discussed the implementation of a  
17 successful automated border control and credentialing solution including a multi-modal biometric  
18 system component in a Latin American country.

19 8. In December, 2010, Alutiiq and ImageWare entered into an exclusive teaming  
20 agreement for the purpose of bidding on a government contract for the U.S. State Department in  
21 Mexico under which ImageWare was to provide the biometric solution for the U.S./Mexico  
22 border control project. In or about mid-2011, ImageWare learned that Alutiiq (in violation of the  
23 exclusive teaming agreement) had begun soliciting competitive bids from third parties and  
24 learned that Alutiiq ultimately selected CITI as its subcontractor for the multi-modal biometric  
25 piece of the project. ImageWare is informed and believes and based thereon alleges that CITI  
26 supplies and sells biometric solutions incorporating ELISE ID to Alutiiq, who in turn resells them  
27 to end users and customers, including without limitation the U.S. State Department.

28 9. ImageWare is ignorant of the true names and capacities of the parties sued herein

1 as DOES 1 through 10, inclusive, whether individual, corporate or otherwise, and therefore sues  
2 these defendants by such fictitious names. ImageWare will amend the complaint to assert their  
3 true names when they have been ascertained. ImageWare is informed and believes and based  
4 thereon alleges that all defendants sued herein as DOES 1 through 10 are in some manner  
5 responsible for the acts and omissions alleged herein.

6 **JURISDICTION AND VENUE**

7 10. This Court has original and exclusive subject matter jurisdiction over this action  
8 under 28 U.S.C. §§ 1331 and 1338(a).

9 11. This Court has personal jurisdiction over the Defendants because they have  
10 conducted and are conducting systematic and continuous business in California and within this  
11 District, and because Defendants have committed patent infringement in California and within  
12 this District by making, selling, offering for sale, importing, and distributing (among other things)  
13 the Accused Products in California and in this District.

14 12. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400(b) because  
15 Defendants have regularly transacted business in California and within this District, because  
16 certain of the acts complained of herein occurred in California and within this District, and  
17 because Defendants derive and seek to derive revenue from sales of infringing products sold in  
18 California and within this District. Defendant WCC's customers include Robert Half Legal,  
19 which has an office in San Diego, California, Adecco, which has two offices in San Diego, and  
20 Accenture, which has an office in San Diego, California.

21 13. ImageWare is informed and believes and based thereon alleges that each of the  
22 Defendants was and is the partner, agent and/or servant of the other and was at all relevant times  
23 acting within the course and scope of such agency. ImageWare is further informed and believes  
24 and based thereon alleges that Defendants are jointly and severally liable to ImageWare by reason  
25 of the acts and misconduct of each other as alleged herein.

26 **GENERAL ALLEGATIONS**

27 14. On November 20, 2007, the United States Patent & Trademark Office ("PTO")  
28 duly and lawfully issued U.S. Patent No. 7,298,873, entitled "Multimodal Biometric Platform"

1 (“the ‘873 patent”). ImageWare is the owner by assignment of the ‘873 patent, a copy of which is  
2 attached hereto as Exhibit A.

3 15. On April 22, 2008, the PTO duly and lawfully issued U.S. Patent No. 7,362,884,  
4 entitled “Multimodal Biometric Analysis” (“the ‘884 patent”). ImageWare is the owner by  
5 assignment of the ‘884 patent, a copy of which is attached hereto as Exhibit B.

6 16. On September 29, 2009, the PTO duly and lawfully issued U.S. Patent No.  
7 7,596,246, entitled “Multimodal Biometric Platform” (“the ‘246 patent”). ImageWare is the  
8 owner by assignment of the ‘246 patent, a copy of which is attached hereto as Exhibit C.

9 17. On October 20, 2009, the PTO duly and lawfully issued U.S. Patent No.  
10 7,606,396, entitled “Multimodal Biometric Platform” (“the ‘396 patent”). ImageWare is the  
11 owner by assignment of the ‘396 patent, a copy of which is attached hereto as Exhibit D.

12 18. ImageWare is informed and believes and based thereon alleges that Defendants’  
13 Accused Products including or incorporating ELISE ID, and certain peripheral hardware and  
14 software infringe one or more claims of the ‘873, ‘884, ‘246 and ‘396 patents. ImageWare is  
15 further informed and believes and thereon alleges that Defendants’ infringement is willful.

16 **FIRST CLAIM FOR RELIEF**

17 **(Infringement of U.S. Patent No. 7,298,873)**

18 19. ImageWare repeats, realleges and incorporates by reference the allegations of  
19 paragraphs 1 through 18 as though set forth fully herein.

20 20. This claim is for patent infringement under the Patent Laws of the United States,  
21 Title 35 of the United States Code.

22 21. ImageWare is informed and believes and based thereon alleges that Defendants, by  
23 and through their agents, officers, directors, employees and servants, have been and are currently  
24 willfully and intentionally infringing the ‘873 patent by (a) making, using, offering to sell, and/or  
25 selling Accused Products that are covered by at least one claim of the ‘873 patent; (b) actively  
26 inducing direct infringement of the ‘873 patent; and/or (c) importing, offering to sell, or selling  
27 one or more components of the Accused Products, knowing such components to be especially  
28 made or adapted for use in infringing the ‘873 patent and not staple articles or commodities

1 suitable for substantial noninfringing use. Defendants' acts constitute infringement of the '873  
2 patent in violation of 35 U.S.C. §§271(a), (b) and/or (c).

3 22. ImageWare is further informed and believes and based thereon alleges that if and  
4 to the extent Defendants are not infringing directly, Defendants are infringing indirectly by  
5 contributing to and/or inducing direct infringers, including without limitation each other, and  
6 other downstream customers, partners, and/or end users, including without limitation the State  
7 Department of the United States, to infringe the '873 patent. ImageWare is further informed and  
8 believes and based thereon alleges that Defendants are knowingly inducing direct infringement  
9 and have the specific intent to encourage each other's and customers, partners and end users'  
10 direct infringement of the '873 patent by (among other things) designing, developing and selling  
11 products including without limitation the Accused Products to each other, end users, customers,  
12 and partners for the purpose of performing multimodal biometric identity matching, and/or by  
13 making, using, selling, importing and offering to sell products including without limitation the  
14 Accused Products that perform multimodal biometric identity searching and matching.

15 ImageWare is further informed and believes and based thereon alleges that the Accused Products  
16 are a material component of ImageWare's patented methods and/or systems and that the Accused  
17 Products are not capable of substantial non-infringing use.

18 23. ImageWare is informed and believes and based thereon alleges that Defendants'  
19 infringement will continue unless enjoined by this Court.

20 24. ImageWare is informed and believes and based thereon alleges that Defendants  
21 have derived and received, and will continue to derive and receive, gains, profits and advantages  
22 from the alleged acts of infringement in an amount not presently known to ImageWare but in  
23 excess of the jurisdictional requirement of this Court. By reason of the aforesaid infringing acts,  
24 ImageWare has been damaged and is entitled to monetary relief in an amount to be determined at  
25 trial but in excess of the jurisdictional requirement of this Court.

26 25. Because of the aforesaid infringing acts, ImageWare has suffered and continues to  
27 suffer great and irreparable injury for which there is no adequate remedy at law.  
28

**SECOND CLAIM FOR RELIEF**

**(Infringement of U.S. Patent No. 7,362,884)**

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2  
3 26. ImageWare repeats, realleges and incorporates by reference the allegations of  
4 paragraphs 1 through 25 as though set forth fully herein.

5 27. This claim is for patent infringement under the Patent Laws of the United States,  
6 Title 35 of the United States Code.

7 28. ImageWare is informed and believes and based thereon alleges that Defendants, by  
8 and through their agents, officers, directors, employees and servants, have been and are currently  
9 willfully and intentionally infringing the '884 patent by (a) making, using, offering to sell, and/or  
10 selling Accused Products that are covered by at least one claim of the '884 patent; (b) actively  
11 inducing direct infringement of the '884 patent; and/or (c) importing, offering to sell, or selling  
12 one or more components of the Accused Products, knowing such components to be especially  
13 made or adapted for use in infringing the '884 patent and not staple articles or commodities  
14 suitable for substantial noninfringing use. Defendants' acts constitute infringement of the '884  
15 patent in violation of 35 U.S.C. §§271(a), (b) and/or (c).

16 29. ImageWare is further informed and believes and based thereon alleges that if and  
17 to the extent Defendants are not infringing directly, Defendants are infringing indirectly by  
18 contributing to and/or inducing direct infringers, including without limitation each other, and  
19 other downstream customers, partners, and/or end users, including without limitation the State  
20 Department of the United States, to infringe the '884 patent. ImageWare is further informed and  
21 believes and based thereon alleges that Defendants are knowingly inducing direct infringement  
22 and have the specific intent to encourage each other's and customers, partners and end users'  
23 direct infringement of the '884 patent by (among other things) designing, developing and selling  
24 products including without limitation the Accused Products to each other, end users, customers,  
25 and partners for the purpose of performing multimodal biometric identity matching, and/or by  
26 making, using, selling, importing and offering to sell products including without limitation the  
27 Accused Products that perform multimodal biometric identity searching and matching.

28 ImageWare is further informed and believes and based thereon alleges that the Accused Products

1 are a material component of ImageWare's patented methods and/or systems and that the Accused  
2 Products are not capable of substantial non-infringing use.

3 30. ImageWare is informed and believes and based thereon alleges that Defendants'  
4 infringement will continue unless enjoined by this Court.

5 31. ImageWare is informed and believes and based thereon alleges that Defendants  
6 have derived and received, and will continue to derive and receive, gains, profits and advantages  
7 from the alleged acts of infringement in an amount not presently known to ImageWare but in  
8 excess of the jurisdictional requirement of this Court. By reason of the aforesaid infringing acts,  
9 ImageWare has been damaged and is entitled to monetary relief in an amount to be determined at  
10 trial.

11 32. Because of the aforesaid infringing acts, ImageWare has suffered and continues to  
12 suffer great and irreparable injury for which there is no adequate remedy at law.

13 **THIRD CLAIM FOR RELIEF**

14 **(Infringement of U.S. Patent No. 7,596,246)**

15 33. ImageWare repeats, realleges and incorporates by reference the allegations of  
16 paragraphs 1 through 32 as though set forth fully herein.

17 34. This claim is for patent infringement under the Patent Laws of the United States,  
18 Title 35 of the United States Code.

19 35. ImageWare is informed and believes and based thereon alleges that Defendants, by  
20 and through their agents, officers, directors, employees and servants, have been and are currently  
21 willfully and intentionally infringing the '246 patent by (a) making, using, offering to sell, and/or  
22 selling Accused Products that are covered by at least one claim of the '246 patent; (b) actively  
23 inducing direct infringement of the '246 patent; and/or (c) importing, offering to sell, or selling  
24 one or more components of the Accused Products, knowing such components to be especially  
25 made or adapted for use in infringing the '246 patent and not staple articles or commodities  
26 suitable for substantial noninfringing use. Defendants' acts constitute infringement of the '246  
27 patent in violation of 35 U.S.C. §§271(a), (b) and/or (c).

28 36. ImageWare is further informed and believes and based thereon alleges that if and

1 to the extent Defendants are not infringing directly, Defendants are infringing indirectly by  
2 contributing to and/or inducing direct infringers, including without limitation each other, and  
3 other downstream customers, partners, and/or end users, including without limitation the State  
4 Department of the United States, to infringe the '246 patent. ImageWare is further informed and  
5 believes and based thereon alleges that Defendants are knowingly inducing direct infringement  
6 and have the specific intent to encourage another's direct infringement of the '246 patent by  
7 (among other things) designing, developing and selling products including without limitation the  
8 Accused Products to each other, end users, customers and partners for the purpose of performing  
9 multimodal biometric identity matching, and/or by making, using, selling, importing and offering  
10 to sell products including without limitation the Accused Products that perform multimodal  
11 biometric identity searching and matching. ImageWare is further informed and believes and  
12 based thereon alleges that the Accused Products are a material component of ImageWare's  
13 patented methods and/or systems and that the Accused Products are not capable of substantial  
14 non-infringing use.

15 37. ImageWare is informed and believes and based thereon alleges that Defendants'  
16 infringement will continue unless enjoined by this Court.

17 38. ImageWare is informed and believes and based thereon alleges that Defendants  
18 have derived and received, and will continue to derive and receive, gains, profits and advantages  
19 from the alleged acts of infringement in an amount not presently known to ImageWare but in  
20 excess of the jurisdictional requirement of this Court. By reason of the aforesaid infringing acts,  
21 ImageWare has been damaged and is entitled to monetary relief in an amount to be determined at  
22 trial.

23 39. Because of the aforesaid infringing acts, ImageWare has suffered and continues to  
24 suffer great and irreparable injury for which there is no adequate remedy at law.

25 **FOURTH CLAIM FOR RELIEF**

26 **(Infringement of U.S. Patent No. 7,606,396)**

27 40. ImageWare repeats, realleges and incorporates by reference the allegations of  
28 paragraphs 1 through 39 as though set forth fully herein.

1           41.     This claim is for patent infringement under the Patent Laws of the United States,  
2 Title 35 of the United States Code.

3           42.     ImageWare is informed and believes and based thereon alleges that Defendants, by  
4 and through their agents, officers, directors, employees and servants, have been and are currently  
5 willfully and intentionally infringing the '396 patent by (a) making, using, offering to sell, and/or  
6 selling Accused Products that are covered by at least one claim of the '396 patent; (b) actively  
7 inducing direct infringement of the '396 patent; and/or (c) importing, offering to sell, or selling  
8 one or more components of the Accused Products, knowing such components to be especially  
9 made or adapted for use in infringing the '396 patent and not staple articles or commodities  
10 suitable for substantial noninfringing use. Defendants' acts constitute infringement of the '396  
11 patent in violation of 35 U.S.C. §§271(a), (b) and/or (c).

12           43.     ImageWare is further informed and believes and based thereon alleges that if and  
13 to the extent Defendants are not infringing directly, Defendants are infringing indirectly by  
14 contributing to and/or inducing direct infringers, including without limitation each other, and  
15 other downstream customers, partners, and/or end users, including without limitation the State  
16 Department of the United States, to infringe the '396 patent. ImageWare is further informed and  
17 believes and based thereon alleges that Defendants are knowingly inducing direct infringement  
18 and has the specific intent to encourage each other's and customers, partners and end users' direct  
19 infringement of the '396 patent by (among other things) designing, developing and selling  
20 products including without limitation the Accused Products to each other, end users, customers,  
21 and partners for the purpose of performing multimodal biometric identity matching, and/or by  
22 making, using, selling, importing and offering to sell products including without limitation the  
23 Accused Products that perform multimodal biometric identity searching and matching.

24 ImageWare is further informed and believes and based thereon alleges that the Accused Products  
25 are a material component of ImageWare's patented methods and/or systems and that the Accused  
26 Products are not capable of substantial non-infringing use.

27           44.     ImageWare is informed and believes and based thereon alleges that Defendants'  
28 infringement will continue unless enjoined by this Court.



1 (i) For such other and further relief as the Court deems just and proper.

2 Dated: April 4, 2013

SAN DIEGO IP LAW GROUP LLP

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By: /s/James V. Fazio, III

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JAMES V. FAZIO, III  
TREVOR Q. CODDINGTON, PH.D.

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Attorneys for Plaintiff  
IMAGEWARE SYSTEMS, INC.

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**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff ImageWare Systems, Inc. hereby demands a trial by jury of all issues so triable.

Dated: April 4, 2013

SAN DIEGO IP LAW GROUP LLP

By: /s/James V. Fazio, III

JAMES V. FAZIO, III  
TREVOR Q. CODDINGTON, PH.D.

Attorneys for Plaintiff  
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